

South Carolina Department of Insurance

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201


MARK SANFORD
Governor

SCOTT H. RICHARDSON
Director of Insurance

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

BULLETIN NUMBER 2008-18

TO: All Insurers, Producers and Brokers Transacting the Business of Insurance within the State of South Carolina

FROM: Scott H. Richardson, CPCU 
Director

SUBJECT: 2008 S.C. Act No. 326, Producer Licensing Changes

DATE: November 6, 2008

I. PURPOSE

In an effort to promote licensing uniformity among the states, South Carolina has enacted certain producer licensing changes. On June 16, 2008, Governor Mark Sanford signed into law 2008 S.C. Act No. 326 (Act No. 326) which implemented the National Association of Insurance Commissioner's (NAIC) uniform standards for producer licensing and continuing insurance education. Act No. 326 can be accessed at the South Carolina General Assembly's website (http://www.scstatehouse.net/sess117_2007-2008/bills/1131.htm).

This bulletin is directed to all producers, brokers and insurance agencies. The purpose of this bulletin is to highlight some of the more significant changes effected by this legislation. All changes were effective June 16, 2008 unless otherwise noted.¹ A brief section-by-section summary follows.

II. SECTION-BY-SECTION SUMMARY

A. **Section 4: Appointment Renewal Definition, Appointment Renewal Date, Appointment Renewal Cancellation Date, Fees rejected by the Bank and Credit Card Payment**

Section 38-43-80 (A): Insurers are required to pay the appointment fee. Insurers are required to pay an appointment renewal fee for all appointed producers in September of even numbered years. Appointment fees must not be charged to the producers.

¹ Sections 1, 2, and 3 of the Act are effective June 16, 2008.

Section 38-43-80 (C): If a license fee payment is rejected by a bank or other financial institution, the Department will provide the individual or business entity a notice that the license will be canceled if the license fee and bank charge fee are not received within thirty days of the notice.

Section 38-43-80 (E): Effective January 1, 2009, appointment and license fees may be paid by credit card. The Department will accept VISA, Master Card and Discover credit cards. VISA and Master Debit Cards when used as a credit transaction will also be accepted. The Department will continue to accept Automated Clearing House (ACH) transactions and checks.

B. Section 5: Producer Examination Waivers; pre-licensing education; information on the producer and agency license.

Section 38-43-100 (A) has been amended to remove all waivers and exemptions from taking the state insurance licensing examination. Residents applying for a producer license must take and pass the producer licensing examination.

Section 38-43-100 (F) (3) has been amended to remove all references to pre-licensing education. In other words, pre-licensing education is no longer required before taking a producer license examination. In addition, the Department will no longer approve pre-licensing courses or provide any regulatory authority over any aspects of pre-licensing courses, instructors, or sponsors. Applicants for a producer license may use whatever material they desire to prepare for the examination.

Producers will be issued a perpetual or continuous insurance license. The producer's license is continuous as long as it is renewed timely, continuing education requirements have been met, and it has not otherwise been canceled, suspended or revoked for violations of the South Carolina insurance laws. Section 38-43-100 (G) now provides that a producer's license must contain the licensee's name, address, personal identification number, date of issuance and lines of authority. Given its perpetual status, no expiration date will be included on the producer's license.

Section 38-43-100 (J) eliminates the requirement for lines of authority and expiration date(s) to be included on the agency license. An agency license is continuous as long as it is renewed in January (January 1 – 31) of even numbered years. Moreover, lines of authority are not issued to an agency. The lines of authority are held by the producer(s) affiliated with the agency.

C. Section 6. Pre-licensing Education

Section 38-43-101 has been changed to remove all references to pre-licensing education. This change was effective on June 16, 2008.

D Section 7. Agency

Section 38-43-102(A)(2) has been changed to remove the term "Business Entity" and replaced with the term "Agency."

E. Section 8. Pre-licensing Education; Continuing Education (Effective June 16, 2008)

Section 38-43-106 (A) (4) provides that producers may continue to repeat a continuing education course, but credit may not be given more than once for a course taken during a two year CE compliance period. Previous law prohibited a producer from repeating a continuing education course during a three year period.

Section 38-43-106 (B) removes all references to pre-licensing education. Since pre-licensing education is no longer required, resident producers who take a pre-licensing course may not use the course to waive the continuing education (CE) requirement. Resident producers licensed during the first year of the biennial compliance period must complete twenty-four hours of CE with at least three hours of ethics and pay the record keeping fee. For the compliance period beginning May 1, 2008 and ending April 30, 2010, a producer licensed between May 1, 2008 and April 30, 2009 must complete twenty-four hours of continuing education with three hours of ethics and pay the recordkeeping fee.

Producers licensed during the second year of the biennial (every two years) compliance period must complete three hours of ethics and pay the record keeping fee. This would apply to producers licensed between May 1, 2009 and November 1, 2009. Producers licensed between November 1, 2009 and April 30, 2010 do not have to comply with CE requirements until the following compliance period. **This section applies to resident producers only.**

Section 38-43-106 (D) provides that nonresident producers are no longer required to certify to South Carolina's CE Administrator that continuing education compliance has been met in the producer's home state. However, nonresident produces must continue to pay the recordkeeping fee.

Section 38-43-106 (E) eliminates the CE exemption for insurance producers licensed solely for South Carolina domestic insurance companies which have less than one million dollars in written premiums in any calendar year. These producers will **no longer** be exempt from CE requirements.

Section 38-43-106 (G) and (H) eliminate the exemption from CE requirements effective January 1, 2010. Producers exempt before this date will be grandfathered in, and will not be required to complete CE requirements. After this date, all producers will be required to complete CE requirements.

G. Section 9. Change of address; Change of legal name.

Section 38-43-107 (B) has been changed to provide that a licensed producer who fails to inform the Director or his designee of a change in legal name or address within thirty days of any change is in violation of the insurance laws of South Carolina and is subject to penalties.

H. Section 10. Term of license; Appointment fee; Failure to comply with Continuing Education Requirements (Effective June 16, 2008)

Section 38-43-110(A) requires all producers to renew their producer license on a biennial basis (every two years) on the last day of the licensee's month of birth. The Department will provide additional information on the scheduling for producer renewals in a later bulletin. This requirement is effective May 2, 2010.

Section 38-43-110 (B) requires the cancellation of insurer appointments if the biennial appointment fee is not paid timely. Producers continue to be responsible for ensuring that their appointments are current and up-to-date.

Section 38-43-110 (C) has been changed. Effective May 2, 2010, the requirement for producers to complete thirty hours of continuing education for failure to comply with CE requirements by the biennial compliance deadline has been repealed. In addition to any other penalty provided for by Title 38 of the South Carolina Code, the producer will be subject to a \$50 penalty fee.

I. Section 11. Definition changed (Effective June 16, 2008)

Section 38-43-130 (C): The following violations have been removed from this section of the state insurance laws:

- (15) failing to inform promptly the customer of the correct premium or informing him of an incorrect premium based on the information furnished the producer ;
- (16) failing to deliver promptly a policy, endorsement, or rider to any insured;
- (17) failing to notify promptly the customer or insured whether or not the producer has been able to obtain the requested insurance for him; or
- (18) failing to maintain adequate records regarding insurance.

These requirements were considered redundant as they are included in other sections of Title 38.

J. Section 12. Resident broker's premium tax. - Requirement for a resident to be licensed as an insurance broker. (Effective June 16, 2008).

Section 38-45-20(2) provides that effective January 1, 2009, resident property and casualty producers who wish to become licensed as a broker must successfully pass a broker examination. Like insurance producers, brokers will no longer be required to take prelicensing education courses.

Section 38-45-20 also provides that at any time a surplus lines policy, written by a resident broker, is canceled, the policyholder is entitled to a full refund of unearned premium taxes, regardless of the date cancellation is requested

K. Section 13. Nonresident broker's premium tax; Requirement for a nonresident broker to be licensed_as a nonresident insurance broker. (Effective June 16, 2008)

Section 38-45-30(6) provides that at any time a surplus lines policy, written by a nonresident broker, is canceled, the policyholder is entitled to a full refund of unearned premium taxes, regardless of the date cancellation is requested.

L. Section 14. Director may approve certain insurers to write insurance (Effective June 16, 2008)

Section 38-45-90 has been amended to clarify that nonresident brokers may also place business directly with a surplus lines insurer without having a resident broker counter sign the policy. Nonresident brokers may also file their quarterly premium taxes directly with the Department.

M. Section 16. Education requirements

This section repeals section 38-43-105, pre-licensing education requirements. As stated previously, applicants for individual licensure are no longer required to complete forty hours of pre-licensing education to become licensed as a producer.

This bulletin is a brief summary of some of the more significant changes effected by this legislation. Licensees should review 2008 S.C. Act No. 326 carefully. Please do not hesitate to contact Mary Ann O'Brien if you have any questions about the Department's plans for implementation of the aforementioned legislative changes which may not have been addressed by this bulletin. Ms. O'Brien may be reached via e-mail at mobrien@doi.sc.gov or at (803) 737-6095.²

² Bulletins are the method by which the Director of Insurance formally communicates with persons and entities regulated by the Department. Bulletins are not law. They are departmental interpretations of South Carolina insurance laws and regulations and provide guidance on the Department's plans for enforcement. Bulletins neither set forth legal rights, duties or privileges nor provide legal advice. Readers should consult applicable statutes and regulations or contact an attorney of your choice for legal advice and if additional information is needed.